

# **DRUGGED DRIVING CONFERENCE**

August 31 – September 3, 2020  
Phoenix, Arizona



**Thursday, September 17, 2020**

## **Cross-Examination of Defendants and Defendant's Doctors**

Presented by:

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**&**

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Distributed by:

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## CROSS EXAMINATION OF DEFENDANT

LET US DO

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## BUT FIRST...

I TRY TO PREPARE FOR EVERYTHING  
BEYOND THE EXTENT OF PREPARATION.

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## LEVEL 1: BASIC CONCESSIONS

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IT'S OKAY TO BE A BASIC P, FOR NOW

- ☐ Date
- ☐ Time
- ☐ Location
- ☐ Jurisdiction
- ☐ ID

You can always get venue!

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WHY IS IT A WIN?



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PRACTICE



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**PRO TIP**

- Put the jury instruction book on the overhead projector or ELMO
- Check off the elements as Defendant concedes

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**LEVEL 2: FACTS**

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**MAKE DEFENDANT CONCEDE FACTS FROM OUR STORY THAT  
DEFENDANT DID NOT CONTEST DURING HIS VERSION**



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Sign Post: Sir, I'm going to ask you some questions, which if you are truthful, will likely result in us being in agreement. Is it okay if I ask you those questions?

Sir, You agree that you did the field sobriety tests?  
And you were here when the video was played in the court?  
And agree that you wobbled? You needed the instruction repeated? And you admitted to drinking?

Topics: Driving, weather, road conditions, where they were coming from, where they were going, that their blood was actually drawn, .... The list goes on.

**These Should be YES or NO questions.**

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Rein Defendant in! Be in control. Keep answer yes or no. Not their chance to explain.

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**LEVEL 3: LOCK IN A STORY**

- You already have a great idea of defendant's story
  - His big mouth
  - His big mouth attorney
  - Deviation letter
  - His admission in police report
- You just heard version 2.0 of his story

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**IF THEY  
DIFFER, OR  
YOU CAN  
PROVE ITS  
GARBAGE...**

**LOCK IT IN!**

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**PRO TIPS**

- Remember to listen
- Bullet points
- Only the juiciest of good, good gets to be in quotes; unless, you have a NED!
- “Judge may I have a minute”- organize

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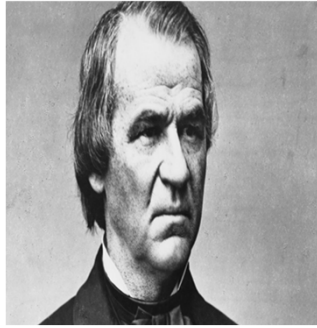
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### Impeach him

- Show the two versions
- Drawing columns helps
- Bring up all the evidence that supports your TRUE version- testimony and physical
- Ask what evidence he has to support this LIE



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**LEVEL 4: GET  
DEFENDANT TO  
ADOPT AN  
IDEAL OR VALUE**

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### THINK OF QUESTIONS WHERE BOTH ANSWERS HELP YOUR CASE.

- Sir, do you agree that driving after smoking marijuana is dangerous?
- You do? Why? Tell me more. So you don't dispute ..... (Let them talk!!! Let there be an awkward pause ... they will keep talking) redirect if necessary
- You don't? .....

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### SHOW THEY DON'T KNOW THE SCIENCE

- What were you baseline blood levels
- What were your levels when your doctor renewed the prescription
- What was that Doctor's name? Are they here today to testify?
- What was the THC concentration?
- Do you agree the principal that people that are HIGH are poor predictors of themselves being high?
- You dispute the studies, do you? You don't dispute the lab results? (CHECK OFF THE .08+ on the ELMO)

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### DEFENSE

### HAVE A FEW PHRASES TO HELP YOU ESCAPE

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Any reason the Officer would make that up? Did he steal your girl in High School

Isn't it true that you're only now saying this to paint yourself in the best light.

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## DOCTORS



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## IS DEFENDANT'S DOCTOR AN EXPERT?

- Did Defense Notice them as an expert witness?
- Did they follow the rule and give you a summary of their testimony?
- Get the doctor's CV – are they qualified to proffer an opinion in this field?



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## TO DO:

- Interview them
- Don't pay them
- Ask for a CV
- Subpoena duces tecum
- In person if possible
- Ask their expert opinion first-
- Then ask how they reached that opinion

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**DON'T**

- Be a jerk
- Be intimidated
- Give away your case theory
- ...



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Dr. [REDACTED] is fearful of doing a telephonic interview. He says he suffers from performance anxiety and will likely stammer. He would like to know if you would be willing to provide him with a written list of questions so that he can answer those questions in a written report.

Thanks.

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